

M.S.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/497,836	02/03/2000	Victor S. Moore	BC9-99-044	7966

23334 7590 11/06/2002

FLEIT, KAIN, GIBBONS,
GUTMAN & BONGINI, P.L.
ONE BOCA COMMERCE CENTER
551 NORTHWEST 77TH STREET, SUITE 111
BOCA RATON, FL 33487

EXAMINER

FLYNN, KIMBERLY D

ART UNIT

PAPER NUMBER

2153

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

2

Office Action Summary

Application No.

09/497,836

Applicant(s)

MOORE ET AL.

Examiner

Kimberly D Flynn

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 3-6, 8-11, and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Gupta et al. U.S. Patent No (6,415,326).

In considering claims 1,6, and 11, Gupta discloses a method for transmitting data from a server to a requesting computer, the method comprising the steps of:

receiving a request for a data item at the server (*col. 6, lines 30-32*);

receiving a speed indication signal at the server from the requesting computer (*col. 6, lines 38-40 and Lines 57-60*); and

transmitting at least portion of the data item to the requesting computer at a rate based on the speed indication signal (*col. 6, lines 63-65*).

In considering claims 3, 8, and 13, Gupta discloses a method further comprising the steps of:

accessing a remote computer indicated in an address included in the request; and
receiving the first data from the remote computer (*col. 6, lines 32-35*).

In considering claims 4, 9, and 14, Gupta discloses a method further comprising the steps of reading the data item from a memory associated with the server (*col. 3, lines 17-20, and fig. 1 means (13)*).

In considering claims 5, 10, and 15, Gupta discloses a method for transmitting data from a server to a requesting computer, the method comprising the steps of:

accepting a user request for a data item at a client computer (*col. 6, lines 30-32*);
accepting a user input speed setting at the client computer (*col. 6, lines 38-40*);
generating a schedule for issuing pause transmission and resume transmission signals based on the user input speed setting (*col. 6, lines 42-47*);
transmitting the user request for a data item to a server computer (*col. 6, lines 32-35*);
sending a sequence of pause transmission and resume transmission signals from the client computer to a server computer according to the schedule (*col. 7, lines 63-67 through col. 8, lines 1-5*).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 7, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta.

In considering claims 2, 7, and 12, although Gupta discloses the invention substantially as claimed, Gupta does not explicitly disclose a method in which the transmitting steps comprises substeps of: determining a block size based at least on, the speed indication signal; determining a period based at least on, the speed indication signal; and transmitting a plurality of blocks of data, each of the blocks having a block size and being transmitted at intervals substantially equal to the time period.

However, Gupta does disclose wherein "streaming" indicates wherein data representing various data types are provided over a network to a client computer on a real-time, as-needed basis (in block) rather than being pre-delivered in its entirety before playback (*col. 1, lines 30-36*). Nonetheless, the Examiner takes official notice that it is well known that when streaming data, the data is provided in blocks wherein the size of the blocks and the period in which the blocks of data would be streamed are determined based upon the indicated or determined speed. Furthermore, it would have been obvious to a person having ordinary skill in the art to recognize that multimedia data streams are transmitted in real-time blocks based on the speed and the

Art Unit: 2153

length rather than by downloading an entire file. Therefore, the claimed limitation would have been an obvious modification to the system taught by Gupta.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly D Flynn whose telephone number is 703-308-7609. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 703-305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

(703) 746-7238, for After Final communications


(703) 746-7239, for Official communications

(703) 746-7240, for Non-Official/Drafts.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Kimberly D Flynn
Examiner
Art Unit 2153

KF
November 1, 2002


GLENTON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100